

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 60853-3-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
JOSE FIGEROA MARTINES,	)	
	)	
Appellant.	)	FILED: July 20, 2009

Grosse, J. — When a person is not in custody while being questioned at the scene of a vehicular accident by the investigating police officer, their statements are admissible. Accordingly, Martines' statements to the investigating officer at the accident scene were admissible. Additionally, Martines' statements to officers at the hospital and at the jail were admissible because they were made after Martines knowingly, voluntarily, and intelligently waived his Miranda<sup>1</sup> rights. We affirm.

### FACTS

This appeal arises out of a motor vehicle collision that occurred during the evening of March 14, 2006, on State Route 900 in Renton. Trooper Cliff Roberts of the Washington State Patrol was the first officer on the scene. An emergency medical technician (EMT) at the scene told Trooper Roberts that Martines told him he had been drinking and caused the collision. Trooper Roberts watched as the EMTs placed Martines on a backboard.

Once Martines was on the backboard, Trooper Roberts began questioning him in English. The trooper asked Martines if he had a driver's license and, when Martines

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

responded that he did, the trooper enlisted the help of the EMTs in getting Martines' wallet out of his back pocket. After Trooper Roberts checked the license and identified Martines, he asked Martines what happened. Martines replied, in English, that he had had some drinks, but nothing to eat. Trooper Roberts asked Martines if he was "buzzed," and Martines responded that yes, he was. Trooper Roberts smelled the clear odor of intoxicants coming from Martines and saw that Martines had bloodshot and watery eyes.

The EMTs loaded Martines into the ambulance, and Trooper Roberts climbed in and continued to question Martines. Martines repeated, at least a couple of times, that he had been drinking. The trooper asked how the collision happened. Martines replied, in English, "I lost control." Trooper Roberts testified that up to that point, he had no concerns about a language barrier and that Martines appeared to speak perfect English.

Trooper Roberts asked Martines how much he had to drink, and Martines responded that he drank two pitchers of beer. The trooper asked Martines if he would be willing to take a couple of sobriety tests, and Martines, in English, agreed. Trooper Roberts explained the horizontal gaze nystagmus test in English to Martines, and Martines responded in English that he understood the instructions. Trooper Roberts administered the test and, based on Martines' performance, concluded that Martines was "more than likely under the influence of intoxicating liquor and above the legal limit."

Trooper Roberts then asked Martines if he would be willing to blow into the

preliminary breath test instrument and explained the test to him in English. Martines agreed to the test, and the results were 0.113.

Based on Trooper Roberts' observations of Martines and the accident scene and on Martines' statements, Trooper Roberts placed Martines under arrest. Immediately after placing Martines under arrest, Trooper Roberts read Martines his Miranda rights from the DUI (driving under the influence of an intoxicant) packet. Martines indicated, in English, that he understood his rights but, because he was strapped onto the backboard, was unable to sign the document indicating his understanding. Trooper Roberts also read Martines the waiver of rights portion. Martines replied, in English, "not this time."

Trooper Roberts then read Martines the implied consent warning and asked him if he understood. Martines replied, in English, that he did not understand the warning "because of the language barrier." Trooper Roberts planned to read the implied consent warning again, but was informed that Renton police were on the way and were going to take over the case.

Trooper Roberts testified that he never asked Martines whether he needed an interpreter because, until Martines mentioned a language barrier, he never gave the trooper any reason to assume he did not speak English and because all of his responses to the trooper's questions were in fluent English.

Renton Police Officer Catherine Citron was dispatched to the scene of the accident. She spoke with Trooper Roberts, who relayed to her the information he obtained before she arrived. Officer Citron went to Valley Medical Center, where

Martines had been taken for treatment. She found Martines in the emergency room and noticed that his eyes were watery and bloodshot and that he smelled strongly of intoxicants. Officer Citron read Martines his Miranda warnings in Spanish. After she did so, Martines asked her, in English, to re-read the rights in English. She complied and read the rights in English. Martines then signed the document from which Officer Citron read the Miranda warnings, and she then read, in English, the waiver of rights portion. Martines agreed to waive his rights and signed the waiver. At no time did Martines indicate to Officer Citron that he did not understand her. Officer Citron then read Martines the special evidence warnings in English. Included in the warnings was the statement advising Martines of his right to have an additional blood test taken by a qualified person of his choosing. Martines signed the special evidence warnings and acknowledged having read the warnings or having had them read to him. Officer Citron then asked Martines a series of questions taken from the standard DUI questionnaire. A blood test was administered, and the results showed a blood alcohol level of 0.10.

Renton Police Officer Eddie Goodman was assigned to follow up on the collision. The day after the accident, Officer Goodman interviewed Martines in the Renton jail, where he was being held. Before questioning Martines, Officer Goodman read him his Miranda rights, in English, from a prepared form and gave Martines an opportunity to look at the form. Martines indicated his understanding of his rights and signed an acknowledgement to that effect. Officer Goodman then read Martines the waiver of rights portion; Martines indicated that he understood the waiver and signed an acknowledgement and waiver.

Officer Goodman explained to Martines that he needed to take a statement and would give Martines an opportunity to review the statement. Martines agreed and the officer took his statement. In the statement, Martines said he and a co-worker shared two pitchers of beer at a West Seattle bar and, while he was driving, he felt affected by what he had to drink. At no time during the interview did Martines indicate that he did not understand what was happening, request a lawyer, or ask that the questioning stop. Officer Goodman testified that Martines appeared to have read through the statement and Martines initialed any place the officer made a mistake or a correction.

Martines was charged with one count of vehicular assault and one count of reckless driving. The trial court held a CrR 3.5 hearing to determine the admissibility of Martines' pre- and post-Miranda statements to the police at the scene of the accident, at the hospital, and while in jail. The court ruled that all of Martines' statements were admissible: his statements to Trooper Roberts were admissible because the officer's contact with him was for purposes of investigation and Martines was not in custody at the time, so Miranda was not implicated, and his statements to Officers Citron and Goodman were admissible because they were made after he knowingly, intelligently, and voluntarily waived his Miranda rights.

The trial court held a CrR 3.6 hearing to determine the admissibility of the evidence of Martines' blood test. The court denied the motion to suppress and held that the blood test results were admissible.

Following the court's rulings on the CrR 3.5 and 3.6 motions, Martines waived a jury trial and agreed to a trial on a stipulated record. The trial court found Martines

guilty as charged, and Martines was sentenced to a standard range sentence.

## ANALYSIS

### Blood Test Results

Officer Citron ordered a blood test pursuant to RCW 46.20.308(3), which provides that if a person is under arrest for vehicular assault, a blood test may be administered without the consent of the person arrested. Before administering the test, the arresting officer must advise the person of the implied consent rights and warnings, including the right to have additional blood tests administered by any qualified person of the arrestee's choosing.<sup>2</sup>

The trial court concluded that because Martines was arrested for vehicular assault, he did not have to be advised of the implied consent warnings, including the right to have an independent test, because he did not have the right to refuse the test. Martines argues this was error, and the State concedes this error. This error does not, however, compel reversal because Martines does not dispute that Officer Citron read the implied consent warnings to him, including the right to have an independent test. His argument is that the blood test results should have been suppressed because he had the right to have the implied consent warnings read to him in a language he could understand which, he argues, was Spanish and not English. The trial court found: "The overwhelming evidence suggested that the defendant understood English and that the lack of interpreter had no effect on his ability to understand his rights or to knowingly and voluntarily waive his rights."

The trial court's ruling on a motion to suppress will be affirmed if substantial

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<sup>2</sup> RCW 46.20.308(2).

evidence supports the court's findings of fact and those findings support the court's conclusions of law.<sup>3</sup> We review conclusions of law de novo.<sup>4</sup>

Aside from Martines' single statement to Trooper Roberts about a language barrier, there is no other evidence to suggest that he did not understand English. The overwhelming evidence shows that Martines fully understood English. He even asked Officer Citron to re-read the Miranda warnings in English after she had read them to him in Spanish. Further, Martines signed the form Officer Citron used containing the special evidence warnings, which was written in both English and Spanish, and thereby indicated his understanding of the contents of the form. Substantial evidence supports the trial court's finding that Martines understood English. The trial court did not err in denying Martines' motion to suppress the results of his blood test.

#### Statements to Trooper Roberts

The trial court determined that Martines was not in custody during his initial contact with Trooper Roberts and that some of his statements to Trooper Roberts were not responsive to actual questions the trooper was posing. Accordingly, the court concluded that Miranda was not implicated, and Martines' statements were admissible.<sup>5</sup>

Martines argues that the trial court erred in determining that he was not in custody when he was on the backboard because a reasonable person in his position would have felt that his movement was restricted to the level of a custodial arrest. The State argues that Martines was detained pursuant to a Terry<sup>6</sup> stop and was not in

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<sup>3</sup> State v. Chang, 147 Wn. App. 490, 495, 195 P.3d 1008 (2008).

<sup>4</sup> Chang, 147 Wn. App. at 495.

<sup>5</sup> Again, we review the trial court's findings of fact for substantial evidence and conclusions of law de novo. Chang, 147 Wn. App. at 495.

<sup>6</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

custody at the time he made the statements to Trooper Roberts. We agree with the State that Martines was not in custody at the time he made the statements to Trooper Roberts.

The principles regarding when a person is in custody for purposes of Miranda are well settled:

A defendant is in custody for purposes of Miranda when his or her freedom of action is curtailed to a degree associated with formal arrest. Custody is a mixed question of fact and law. The factual inquiry determines the circumstances surrounding the interrogation. The legal inquiry determines, given the factual circumstances, whether a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave. The reviewing court applies an objective test to determine the ultimate inquiry: whether there was a formal arrest or restraint of the defendant to a degree consistent with formal arrest.<sup>[7]</sup>

“The issue is not whether a reasonable person would believe he or she was not free to leave, but rather ‘whether such a person would believe he was in police custody of the degree associated with a formal arrest.’”<sup>8</sup>

We have found that a person is not in custody while being interrogated at the scene of a vehicular accident by the investigating officer. In State v. Ferguson,<sup>9</sup> an officer responding to the scene of an accident found Deaon Ferguson seated on the grass near the accident. The officer asked Ferguson if he had been driving one of the vehicles, and Ferguson answered yes. The officer asked for Ferguson’s driver’s license, and Ferguson told him it was in his car. From Ferguson’s facial expression

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<sup>7</sup> State v. Grogan, 147 Wn. App. 511, 517, 195 P.3d 1017 (2008) (internal citations, quotation marks, and alterations omitted).

<sup>8</sup> State v. Ferguson, 76 Wn. App. 560, 566, 886 P.2d 1164 (1995) (quoting 1 W. LaFave & J. Israel, Criminal Procedure § 6.6, at 105 (Supp. 1991)).

<sup>9</sup> 76 Wn. App. 560, 886 P.2d 1164 (1995).



and general demeanor, the officer suspected that Ferguson had been drinking. He asked Ferguson whether he had been drinking, and Ferguson admitted he had. The officer then asked how much he had to drink, and Ferguson said two mixed drinks. A Washington State Patrol trooper arrived on the scene and the officer told him Ferguson had been drinking. The trooper asked Ferguson if he had been drinking, and Ferguson said he had a couple of drinks. By this time, an aid crew was attending to Ferguson, and the trooper told the crew not to transport Ferguson to the hospital just yet. The trooper then learned that another person had died at the scene. He returned to Ferguson, who by then had been strapped to a backboard, arrested him for vehicular homicide, and read him his Miranda rights.

One issue on appeal was whether Ferguson was in custody at the time he made the statements to the officer and the trooper. In affirming the trial court's conclusion that Ferguson was not in custody, we relied on Berkemer v. McCarty,<sup>10</sup> in which the Supreme Court stated that an officer who lacks probable cause, but whose observations lead him or her to reasonably suspect that a person has committed a crime, may detain that person briefly in order to investigate the circumstances that provoked the suspicion. The officer may ask the detainee a moderate number of questions to determine his or her identity and to try to obtain information to confirm or dispel the officer's suspicions. Persons detained under such circumstances are not "in custody" for purposes of Miranda.<sup>11</sup>

We also relied in Ferguson on Cordoba v. Hanrahan,<sup>12</sup> where the court rejected

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<sup>10</sup> 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984).

<sup>11</sup> Berkemer, 468 U.S. at 439-40.

<sup>12</sup> 910 F.2d 691 (10th Cir. 1990).

the argument that a driver is in custody because the investigation of an automobile accident is more coercive than a routine traffic stop. The court held that the investigation of an automobile accident is analogous to a Terry stop, and that an officer arriving at the scene may ask a person apparently involved in the accident questions to determine whether he or she should be issued a traffic citation, whether there is probable cause to arrest the person, or whether the person should be free to leave.

The court in Ferguson also noted that the officers questioned Ferguson in full view of civilian witnesses and their questions were brief, nondeceptive, and straightforward. “A driver who has just been involved in a car accident and who is asked by an investigating officer whether he or she has been drinking could hardly be deceived as to the reason for the question: the officer obviously is investigating fault for the accident.”<sup>13</sup>

Under Ferguson, Martines was not in custody while Trooper Roberts questioned him at the scene of the accident for purposes of investigation. As in Ferguson, the trooper’s questions were brief, nondeceptive, straightforward, and made in the presence of the aid crew. The fact that Martines was strapped to a backboard at the time of the questioning does not change this conclusion. We agree with the majority view among courts that have considered this issue that a suspect who is restrained for medical treatment by medical personnel need not be informed of his or her Miranda rights before being subjected to questions from police officers.<sup>14</sup> The questioning is typically done in public in the presence of EMT personnel which diminishes the

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<sup>13</sup> Ferguson, 76 Wn. App. at 568 n.12.

<sup>14</sup> Commonwealth v. LaFleur, 58 Mass. App. 546, 791 N.E.2d 380, 383 (2003).

possibility of police domination; the interrogation is usually brief and “influenced in its contours” by what the person told the medical personnel; the officer usually does not convey to the person that he or she is suspected of a crime; and a reasonable person would have understood that his or her detention was by medical personnel for medical purposes and its length would therefore be determined by the person’s medical condition, not by any refusal to answer questions posed by an officer.<sup>15</sup> The trial court did not err in concluding that Martines’ statements to Trooper Roberts were admissible.

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<sup>15</sup> LaFleur, 791 N.E.2d at 383 (internal quotation marks and citations omitted).

Statements to Officers Citron and Goodman

Martines argues that his statements to all of the officers made after he replied “not this time” to Trooper Roberts are inadmissible because his reply of “not this time” was an effective invocation of his right to remain silent that remained effective during the questioning by Officers Citron and Goodman. He also argues that he did not knowingly, intelligently, and voluntarily waive his Miranda rights.

We reject the State’s argument that Martines’ statement “not this time” was not an effective invocation of his right to remain silent. “[T]he invocation of the right to remain silent must be clear and unequivocal (whether through silence or articulation) in order to be effectual.”<sup>16</sup> Trooper Roberts apparently thought Martines’ statement was sufficient, because he stopped questioning him at that point and moved on to the implied consent warnings. Defense counsel’s characterization of the statement as “not at this time,” instead of “not this time,” was, in all likelihood, a simple misstatement. In any event, defense counsel’s mischaracterization does not, contrary to the State’s assertion, render Martines’ invocation of his right to remain silent ineffective. We find that Martines effectively invoked his right to remain silent by his reply of “not this time.”

We disagree, however, with Martines that he did not knowingly, intelligently, and voluntarily waive his Miranda rights. In arguing that he did not knowingly, intelligently, and voluntarily waive his rights, Martines relies on Missouri v. Seibert,<sup>17</sup> in which the Supreme Court disapproved of the “question first” technique of interrogation. This technique involves successive unwarned and warned phases of interrogation, so that

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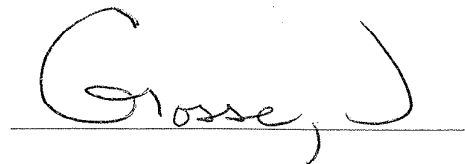
<sup>16</sup> State v. Walker, 129 Wn. App. 258, 276, 118 P.3d 935 (2005).

<sup>17</sup> 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004).

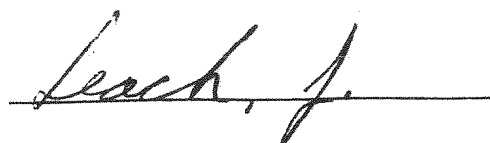
the Miranda warnings are given in the middle of the interrogation. The record does not support Martines' assertion that the officers here used this type of deliberate technique of interrogation. Further, Trooper Roberts' initial questioning was not custodial, so Miranda was not implicated with respect to these questions. Once Martines was taken into custody, the trooper properly read him his Miranda rights and properly stopped questioning when Martines said, "not this time."

Substantial evidence supports the trial court's finding that Martines knowingly, voluntarily, and intelligently waived his Miranda rights before speaking to both Officers Citron and Goodman. Martines acknowledged that he understood the rights as read to him in English and voluntarily signed the waiver portion of the forms. The record shows no coercion whatsoever, nor does it show that Martines' injuries were so severe as to render any waiver ineffectual or that he did not understand what he was doing. Because Martines' statements to Officers Citron and Goodman were made after his knowing, intelligent, and voluntary waiver of his Miranda rights, the trial court did not err in concluding that these statements were admissible.

We affirm.

A handwritten signature in cursive script, appearing to read "Grosse, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Leach, J.", written over a horizontal line.

Schinder, CT